

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

LAWRENCE BUTCHER  
AND JENNIFER BUTCHER

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:06-CV-423

ALLSTATE INSURANCE COMPANY

DEFENDANT

RH CONSTRUCTION, INC.

INTERVENOR

COMPLAINT OF INTERVENOR RH CONSTRUCTION, INC.  
AGAINST ALLSTATE, LAWRENCE BUTCHER AND JENNIFER BUTCHER

COMES NOW, RH Construction, Inc., and files this its Complaint in Intervention in the above styled and numbered cause and asserts claims against Lawrence Butcher, Jennifer Butcher and Allstate Insurance, and in support of same would show unto this Honorable Court as follows:

1. RH Construction, Inc. is a Mississippi corporation with its principal place of business in Carriere, Mississippi.
2. The Plaintiffs, Lawrence and Jennifer Butcher ("the Butchers"), were adult resident citizens of Pearl River County, Mississippi, and contracted with RH Construction, Inc., for the construction of a dwelling. They are now adult resident citizens of Kentucky, on information and belief.
3. Allstate Insurance is an Illinois corporation and issued a policy of insurance covering the dwelling constructed by RH Construction, Inc.
4. The Butchers entered into a contract with RH Construction, Inc. for the construction of a residence in Pearl River County, Mississippi. The agreed upon contract price was \$500,000.00 for the construction of said residence. This was based on the plans and specifications agreed on by the parties to the contract.

5. The Butchers requested changes and extra work and materials totaling \$46,547.00. The 12% reasonable profit and overhead for this amount is \$5,585.00 making a total contract price of \$552,700.00.

6. The Butchers are entitled to credits on the amount of the construction contract price for items deleted in the total amount of \$56,363.00. Accordingly, the total amount due under the contract of construction is \$496,337.00.

7. All but 2.35% of the original construction of the residence was complete when RH Construction was unjustifiably removed from the job and instructed, along with subcontractors, not to return. The amount required to complete the construction contract was \$11,750.00. Accordingly, the total amount owed by the Butchers to RH Construction, Inc. on the construction contract for the residence is \$484,587.00 of which \$397,113.00 had been paid. This leaves a balance owed on the construction contract for work done by RH Construction, Inc. of \$87,474.00 which provides the basis for this Motion to Intervene.

8. RH Construction, Inc. has paid for or is liable to pay for labor and materials which under the agreement with the Butchers is valued at \$484,587.00, and of this amount only \$397,113.00 has been paid. The balance due under the terms of the contract by the Butchers to RH Construction, Inc. is \$87,474.00 for which a judgment is sought.

9. It is also requested that this Court award in addition to a judgment in the amount of \$87,474.00, all attorneys' fees and expenses and costs of collection, as well as all of the general and specific relief to which RH Construction, Inc. may be entitled. RH Construction, Inc. is also entitled to pre-judgment and post-judgment interest.

10. Due to the outrageous and unscrupulous actions of the Butchers, interference with construction crews, laborers, suppliers, subcontractors and others on the job site, unjustified refusal to pay sums due and other actions, RH Construction, Inc. has expended amounts over and above the amount that should have reasonably been required to complete the project and such interference and refusal to pay sums due has caused credit problems and damaged the reputation of RH Construction, Inc. Accordingly, additional amounts of \$50,000.00 are requested to address additional costs, expenses and damages caused by the unjustifiable actions of the Butchers.

11. The conduct of the Butchers in the process of the construction of the house at issue has constituted willful gross and outrageous conduct in derogation of the duties of the Butchers to act in good faith in the performance of the contract. Such actions have been intentional with malicious intent and justify imposition of punitive damages for tortuous breach of contract.

12. The subject property of this litigation has been destroyed by fire.

13. Allstate Insurance Company is the property insurer for Lawrence and Jennifer Butcher and the property at issue.

14. RH Construction, Inc., has an interest in the residence constructed by it to the extent that it has not been fully compensated for the labor, materials, overhead and profit associated with the construction of the dwelling. This property and the insurance transaction related to the property are both the subject of the instant action and the disposition of the instant action may impair or impede RH Construction's ability to protect its interests and RH Construction's interests are not adequately represented by the existing parties.

15. RH Construction, Inc. has rights under the Allstate contract of insurance to be compensated for the labor and material incorporated into the property insured but for which the Butchers had not paid.

WHEREFORE, on the basis of the foregoing, it is respectfully requested that this Court enter a Judgment in favor of RH Construction, Inc. against Lawrence Butcher and Jennifer Butcher in a total amount of \$137,474.00 and all costs and expenses, including attorneys' fees and for all costs of court and other such general or specific relief to which they may be entitled and accrued interest. In addition, RH Construction seeks a Judgment against the Butchers in the amount of \$150,000.00 as punitive damages to deter such outrageous conduct in the future. Furthermore, RH Construction, Inc., respectfully requests this Court award RH Construction, Inc., a Judgment against Allstate Insurance for all amounts attributable to the labor and materials, profit and overhead of RH Construction, Inc. that was part of the residence that was destroyed by fire, but in no event less than the amount of \$87,474.00 plus interest to compensate RH Construction, Inc., for its interest in the subject property that was destroyed by fire and to satisfy RH Construction, Inc.'s interest as secured by a construction lien on said property.

Respectfully submitted,

RH CONSTRUCTION, INC.

BY: s/ Kristopher A. Powell  
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OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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s/ Kristopher A. Powell  
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Kristopher A. Powell